

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C. 20554

In the Matter of  
  
Joint Petition for  
Rulemaking on Cable  
Television Wiring

RM-8380

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

NYNEX'S REPLY COMMENTS

These reply comments are filed on behalf of New England Telephone and Telegraph Company and New York Telephone Company ("NYNEX"), in response to comments filed on December 21, 1993, in opposition to the Joint Petition for Rulemaking of Media Access Project, United States Telephone Association, and Citizens for a Sound Economy Foundation ("Joint Petition for Rulemaking").<sup>1</sup>

The Joint Petition for Rulemaking received overwhelming support from diverse interest groups, including the

<sup>1</sup> The following comments (referred to collectively as "Comments in Opposition") were filed in opposition to the Joint Petition for Rulemaking: Joint Comments in Opposition to Joint Petition for Rulemaking, filed by Cablevision Industries Corp., Multivision Cable TV Corp. and Providence Journal Company ("Cablevision Opposition"); Comments of Continental Cablevision, Inc. ("Continental Opposition"); Comments of the National Cable Television Association, Inc. ("National Cable Opposition"); and Comments of Time Warner Entertainment Company, L.P. ("Time Warner Opposition"). In addition, the New York City Department of Telecommunications and Energy filed comments proposing that the Federal Communications Commission (the "Commission") issue a Notice of Inquiry instead of initiating a rulemaking proceeding (the "New York City Comments").

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electronics industry; utilities; a cable company; a wireless cable association; independent television stations; telecommunications equipment manufacturers; manufacturers, architects, engineers, consultants, contractors, local exchange providers, interconnect companies, and suppliers interested in the design and installation of telecommunications facilities in buildings; public interest groups; and individual consumers.<sup>2</sup>

True competition for cable services cannot be achieved unless consumers have the ability to choose freely among the services offered by competing providers. Customer ownership or control of cable home wiring helps to ensure that customers can exercise free choice regarding the provision of cable and video services. As the Commission itself recognized, "broader cable home wiring rules could foster competition."<sup>3</sup>

As shown below, there is no merit to the claims made in the Comments in Opposition, and the Commission should grant the Joint Petition for Rulemaking.

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<sup>2</sup> There were seventeen filings in support of the Joint Petition for Rulemaking. Among the parties that filed in support are the American Public Info-Highway Coalition; the Association of Independent Television Stations, Inc.; the Building Industry Consulting Service International; the Consumer Electronics Group of the Electronic Industries Association; Liberty Cable Company, Inc.; Mets Fans United/Virginia Consumers for Cable Choice; the Telecommunications Industry Association, User Premises Equipment Division; the Utilities Telecommunications Council; and the Wireless Cable Association International, Inc.

<sup>3</sup> Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Cable Home Wiring, MM Docket No. 92-260, Report and Order, released February 2, 1993 (the "Order"), ¶ 6.

I. IT IS VITALLY IMPORTANT THAT THE COMMISSION SEIZE THIS OPPORTUNITY TO ADOPT RULES ESTABLISHING A SINGLE DEMARCATION POINT LOCATION FOR BOTH TELEPHONY INSIDE WIRING AND CABLE HOME WIRING.

It cannot reasonably be denied that head-to-head competition between the cable and telephone industries is increasing at an accelerating rate. Regulatory parity is essential to this competition. The requested rulemaking proceeding would provide the Commission with the opportunity to ensure parity on the critical issue of the location of the demarcation points for telephony inside wiring (including video dialtone) and cable home wiring.

As explained in NYNEX's Comments, the Commission's existing demarcation point rules do not ensure that the demarcation points for telephony and cable services will be in the same location. The urgent need for comprehensive consideration of the issue of uniform location of the demarcation points is ample justification for a rulemaking proceeding. Indeed, NYNEX proposes that the Commission's primary objective in a rulemaking proceeding should be to achieve uniformity in location of the demarcation points for both telephony and cable services.<sup>4</sup>

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<sup>4</sup> See NYNEX's Comments, filed in this proceeding on December 21, 1993, pp. 2-5.

Liberty Cable Company, Inc. suggests that, where separate facilities exist to deliver telephony and cable services, a single location for the demarcation point may not be necessary. (Comments of Liberty Cable Company, Inc., filed December 21, 1993, pp. 6-7.) In fact, however, a single demarcation point is necessary to achieve regulatory parity among competitors particularly if separate facilities exist. If, for example, the telephony

II. THE COMMISSION HAS THE AUTHORITY TO REGULATE CABLE HOME WIRING BEFORE A SUBSCRIBER TERMINATES SERVICE, AND WIRING LOCATED OUTSIDE THE APARTMENT IN A MULTIPLE UNIT PREMISES.

There is no merit to contentions in the Comments in Opposition that the Commission lacks the authority to adopt rules that (i) give a subscriber control of cable home wiring before service is terminated by the subscriber or (ii) apply to wiring that lies outside of the subscriber's apartment in a multiple unit premises.<sup>5</sup>

The jurisdiction and authority of the Commission to regulate the cable industry pre-dates and is independent of the Cable Television Consumer Protection and Competition Act of 1992.<sup>6</sup> The Communications Act of 1934 gives the Commission broad regulatory authority over "all interstate . . . communication by wire or radio", including cable television services.<sup>7</sup>

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<sup>4</sup> (Footnote Continued From Previous Page)

demarcation point were located in the basement and the cable demarcation point were located at the apartment in a multiple unit premises, cable companies would have a distinct competitive advantage. The telcos' networks would end in the basement, allowing cable companies to access in-place telco inside wiring at that point. The cable companies' networks, on the other hand, would extend to the customer's apartment. Therefore, the telco would not be able to utilize cable company facilities between the basement and the apartment to connect telco customers to such telephony services as video dialtone.

<sup>5</sup> See, e.g., Cablevision Opposition, pp. 3-4, Time Warner Opposition, p. 3.

<sup>6</sup> Pub. L. No. 102-385, 106 Stat. 1460, approved October 5, 1992 ("1992 Cable Act").

<sup>7</sup> See United States v. Southwestern Cable Co., 392 U.S. 157, 167-178 (citing 47 U.S.C. § 152).

The 1992 Cable Act does not preclude the Commission from adopting rules giving subscribers control before termination or control of wiring in common areas. Section 16(d) of the 1992 Cable Act required the Commission to take the following action:

Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.<sup>8</sup>

This section is not a limitation of the Commission's authority. Rather, it sets forth a minimum standard for action to be taken within the stated time frame. Indeed, as the Commission has acknowledged, the scope of the cable home wiring rules initially adopted was limited by time constraints imposed by the 1992 Cable Act, not constraints on the Commission's authority.<sup>9</sup> Moreover, to limit the scope of the Commission's authority under Section 16(d) would defeat the overarching purpose of the 1992 Cable Act to protect consumers and foster competition.

Those parties that oppose the Joint Petition for Rulemaking cite the legislative history of Section 16(d) to support their arguments.<sup>10</sup> But they conveniently ignore the legislative history that cites the regulation of telephony inside wiring -- in particular, the customer's right to remove,

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<sup>8</sup> 47 U.S.C. § 544(i).

<sup>9</sup> Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Cable Home Wiring, MM Docket No. 92-260, Report and Order, released February 2, 1993 (the "Order"), ¶ 6.

<sup>10</sup> See footnote 6 above.

reconfigure and rearrange telephony inside wiring -- as an appropriate paradigm for the regulation of cable home wiring.<sup>11</sup>

Finally, the Comments in Opposition argue that adoption of cable home wiring rules giving subscribers control of cable home wiring prior to termination of service would improperly subject cable service providers to regulation as common carriers.<sup>12</sup> Clearly, however, such cable home wiring rules cannot be compared to the broad panoply of rules adopted pursuant to the Communications Act of 1934 that apply to common carriers. Moreover, this argument also ignores the legislative history citing telephony inside wiring rules as an appropriate paradigm for the regulation of cable home wiring.<sup>13</sup>

### III. THE ISSUE OF "OWNERSHIP" SHOULD NOT DEFEAT SUBSCRIBER CONTROL OF CABLE HOME WIRING IMMEDIATELY UPON INSTALLATION.

Comments in Opposition contend that the ownership rights of cable service providers preclude rules giving subscriber's ownership of cable home wiring prior to termination of service.<sup>14</sup> As in the case of telephony inside wiring, however, issues of ownership should not preclude the Commission from achieving its goal of competition in the market for cable home wiring.

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<sup>11</sup> See S. Rep. No. 92, 102d Cong., 1st Sess. 23 (1991).

<sup>12</sup> See Time Warner Opposition, pp. 6-9.

<sup>13</sup> See footnote 12 above.

<sup>14</sup> See, e.g., Continental Opposition, pp. 7-8.

When it adopted inside wiring rules for the telephone companies in 1980, the Commission did not decide the issue of ownership of inside wiring. Instead, the Commission concluded that ownership should be determined according to state law. However, the Commission expressly stated that no claim of ownership by a telephone company could prevent a customer from removing, reconfiguring or rearranging inside wiring on the customer's side of the demarcation point. The Commission concluded that customer control of inside wiring was essential to achieve the Commission's goal of competition.<sup>15</sup>

Cable service subscribers should likewise be afforded exclusive control over cable home wiring. Moreover, subscriber control should begin upon installation. Even if cable service has not been terminated, a customer could obtain additional services from other providers through simultaneous use of spare capacity of the wiring. Customer control upon installation is necessary to achieve the Commission's objectives of increased competition, as well as efficient deployment of new services. Issues of ownership should not be allowed to defeat these objectives.

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<sup>15</sup> Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association, CC Docket No. 88-57, Report and Order and Further Notice of Proposed Rule Making, released June 14, 1990, 5 FCC Rcd. 4686, ¶ 6; ¶ 3, n.2; ¶ 29, n.23.

IV. A RULEMAKING PROCEEDING IS APPROPRIATE TO ADDRESS  
AND RESOLVE ISSUES ASSOCIATED WITH SUBSCRIBER CONTROL  
OF CABLE HOME WIRING.

NYNEX strongly supports the initiation of a rulemaking proceeding to consider refinements of the cable home wiring rules. As stated above, the Commission's primary objective in such a rulemaking should be to adopt rules that ensure a single location for the demarcation points for both telephony and cable services.

A rulemaking proceeding would also provide an appropriate forum in which to resolve all related issues.<sup>16</sup> Chief among these issues is a determination of the optimal location in single and multiple unit premises of the demarcation points for both telephony inside wiring and cable home wiring. Additional issues to be resolved include when customer control will begin, and how the rules will apply to cable home wiring in the "loop through" configuration.

The Commission is well on the way to resolving issues surrounding the adoption of broader cable home wiring rules. The Commission has the benefit of the record in the recent proceeding in which it initially adopted cable home wiring rules, and existing telephony inside wiring rules that may be used as a template.<sup>17</sup> For these reasons, NYNEX does not

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<sup>16</sup> NYNEX has no objection to resolving issues raised by the Petition for Reconsideration of the NYNEX Telephone Companies, filed on April 1, 1993, in MM Docket No. 92-260, as part of a rulemaking, as proposed in the Comments of BellSouth, filed in this proceeding on December 21, 1993.

<sup>17</sup> See Order, ¶¶ 25-26; 47 U.S.C. § 68.3.




believe that a Notice of Inquiry is necessary, as proposed in the New York City Comments.<sup>18</sup>

V. CONCLUSION

For the foregoing reasons, and those previously stated in NYNEX's Comments in this proceeding, NYNEX respectfully requests that the Commission initiate a proceeding and adopt rules that (i) ensure a single location for demarcation points for both telephony and cable services; (ii) give subscribers control of their cable home wiring immediately upon installation; and (iii) apply to wiring in the "loop through" configuration.

Respectfully submitted,

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Dated: January 19, 1994

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<sup>18</sup> New York City Comments, p. 3. NYNEX is also unconvinced that local franchising authorities should be permitted to "adjust" the location of the demarcation point for cable home wiring. See New York City Comments, p. 6. The authority to make such "adjustments" would give rise to substantial uncertainty. More important it could prevent location of the demarcation points for telephony and cable services in the same location, thus defeating the objective of regulatory parity.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing NYNEX's REPLY  
COMMENTS were served on each of the parties listed on the  
attached Service List, this 21st day of January, 1994, by first  
class United States mail, postage prepaid.

  
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